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An Effective Governance System for 2030 EU Climate and Energy Policy: Design and Requirements

Discussion Paper

Nils Meyer-Ohlendorf

with contributions from Matthias Duwe, Ennid Roberts and Katharina Umpfenbach

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1 List of Abbreviations

ACER	Agency for Cooperation of Energy Regulators
AEAs	Annual Emission Allowances
AR/PC	Auctioning Revenue and Project Credits
BRs	Biennial Reports
COM	European Commission
CSRs	Country Specific Recommendations
ECHA	European Chemicals Agency
eds.	editors
EE	energy efficiency
EEA	European Environment Agency
EED	Energy Efficiency Directive
EFSA	European Food Safety Authority
ENTSO-E/G	European Networks of Transmission System Operators for Electricity and Gas
ESD	Effort Sharing Decision
et al.	et alia
ETS	Emissions Trading System
EU	European Union
GDP	Gross domestic product
GHG	Greenhouse Gas
GMO	genetically modified organisms
LCDS	Low-Carbon Development Strategies
LRF	Linear Reduction Factor
MMR	Monitoring Mechanism Regulation
MS	Member State/s
MSR	Market Stability Reserve
NAPs	National Allocation Plans
NCs	National Communications
NCEAPs	National Climate and Energy Action Plans
NEEAPs	National Energy Efficiency Action Plans
NIR	National GHG Inventory Report
No.	Number
NRPs	National Reform Programmes
NSEAPs	National Sustainable Energy Action Plans
OMC	Open Method of Coordination
p.	page
PAMs	Policies and Measures
RE	Renewable Energy
RED	Renewable Energy Directive
S&TT	support and technology transfer
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UNFCCC	United Framework Convention on Climate Change

2 Summary

The EU climate and energy governance system until 2020 has been **remarkably successful**. Despite some significant shortcomings, such as the insufficient level of ambition with respect to greenhouse gas reductions and the weaknesses of the emission trading scheme, this governance system has contributed significantly to reducing greenhouse gas emissions by 19% in 2013 (below 1990 levels), increasing the share of renewable energies in gross final energy consumption to 14.1% in 2012 and improving energy efficiency, reducing primary energy consumption by 7.3% between 2005 and 2012.[1] According to the 2014 Report on Energy Prices and Costs of the European Commission, this framework has not caused carbon leakage or negatively impacted the competitiveness of the EU economy.[2]

Based on the Lisbon Treaty, the current governance system is **largely composed of legislation** – directives, regulations and decisions. This is not surprising because the EU is based on the rule of law and has considerable powers to legislate in the areas of climate change and energy. By and large, this system has proved to be robust, credible and flexible. It is robust because it allows the European Commission, as well as civil society, to hold Member States' governments accountable. It is credible because the EU is based on the rule of law and has a relatively good record in honouring its legal commitments, thereby giving investors long term investment security and providing international partners assurance that the EU is truly committed to fulfilling its obligations. With a clear set of targets, the system has been transparent and it is relatively easy to communicate. With differentiation in national targets and various types of flexible mechanisms, the system has provided flexibility and taken account of diverse national circumstances. To ensure that this success story continues, the new governance system should again be built on legislation, the most powerful and reliable form of governance. Because legislation is not automatically instrumental for ambitious climate policy, new legislation must be ambitious, credible, flexible and comprehensive.

In March 2015, the European Council called for **reviewing and developing legislation** related to emissions reduction, energy efficiency and renewables to underpin the agreed 2030 targets. In its communication on the Energy Union, the European Commission announced that it will propose a new legislative package on renewable energy in 2016-2017. In addition, the Commission will review all relevant energy efficiency legislation and will propose revisions in 2015 and 2016; it will propose a road transport package and legislation on the internal energy market. Emissions trading will continue after 2020 and so will the Effort Sharing Decision. This makes clear that all major building blocks of the current system will remain in place – although they are set to undergo (significant) reform.

At the same time, the European Council decided to develop a "**reliable and transparent governance system**" for the 2030 policy framework.[3] In line with this decision, the European Commission proposed a number of details of what these bodies refer to as the new

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[1] European Environment Agency (2014): Trends and projections in Europe 2014. Tracking progress towards Europe's climate and energy targets for 2020, EEA Report, No. 6/2014.
[2] European Commission (2014b): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy Prices and Costs in Europe. http://ec.europa.eu/energy/doc/2030/20140122_communication_energy_prices.pdf.
[3] European Council (2014): European Council Conclusions, 23/24 October 2014. EUCO 169/14, para. 6.

"governance framework".[4] However, the proposals are ill-defined and remain ambiguous. To some extent, the proposal seems to suggest a non-binding governance system that is based on political commitments and which resembles the Open Method of Coordination (OMC). Neither the European Council nor the Commission specified the relationship between relevant legislation, up-coming legislative processes and this new governance system. Neither institution stated which aspects of a new governance system will form part of the reformed legislation or will be included in what they call "governance framework".

A governance system that is largely based on political commitments with no legal basis risks undoing much of the success accomplished by the current system. By definition, legislation is more credible, in particular if it has a strong enforcement mechanism. An insufficient compliance system would increase the risk that the 2030 targets will not be achieved; it would also undermine the goals set out in the Energy Union Package that calls for fundamental transformation of Europe's energy system and envisages making the EU "the number one in renewable energies".

Discussions on governance are in flux and only at the beginning, but the overall ambition is clearly set out by the European Council: the new governance system must ensure that the 2030 targets are met and it must transform the EU's current energy system. To do so, **the new governance system should be largely composed of the following elements**:

- **Reformed Renewable Energy Directive (RED)** that establishes a common framework for the promotion of renewable energy in the EU, including a robust mechanism that allows for the measurement of contributions from Member States and to hold them accountable for achieving them. In this respect, the RED should include quantified contributions of Member States to the EU target. Unlike national targets, these contributions would not be legally binding and would not entail infringement procedures. Benchmarks are another option to hold Member States accountable, although weaker than quantified contributions enshrined in the RED.

- **Reformed Energy Efficiency Directive (EED)** that maintains the current framework of measures for the promotion of energy efficiency, including a robust system that allows the measurement of contributions from Member States. As such, Member State contributions to the non-binding EU target could be measured by a system similar to the reformed RED. The continuation of the current system of reporting national indicative targets is another (weaker) option.

- **Reformed Effort Sharing Decision (ESD)** that sets – in particular – minimum level contributions from Member States to the non-ETS reduction targets.

- **Reformed ETS and other existing pieces of legislation**, such as existing legislation on energy efficiency, air quality or internal energy market.

As an important improvement, these laws should merge climate and energy **reporting and planning requirements**. These requirements should be included in the RED **or** the EED; in this case, RED or the EED would make reference to the reporting and planning requirements of the other piece of legislation. The Monitoring Mechanism Regulation (MMR) could be another place to regulate the overall reporting and planning requirements. There is no need to include reporting and planning requirements in legally non-binding documents.

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[4] European Commission (2014): A policy framework for climate and energy in the period from 2020 to 2030, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2014/015 final.

Based on comprehensive legislation, this governance system practically covers the entire spectrum of climate and energy policy, **leaving very little or no room for soft or light touch approaches**. In this respect, the discussions on EU climate and energy governance as well as the Energy Union should only prepare the way to a robust, reliable and transparent system.

3   Introduction

In late October 2014, the **European Council agreed on the 2030 climate and energy architecture**.[5] The agreement contains a target for domestic greenhouse gas reductions of at least 40% compared to 1990. To achieve the overall 40% target, the sectors covered by the EU emissions trading system are expected to reduce their emissions by 43% compared to 2005, other sectors are expected to cut emissions by 30% below the 2005 level. Concerning the non-ETS target, the European Council not only agreed on an overall target for the EU but also on a formula to break down the target to Member State level. The European Council decided that the existing methodology of the 2020 Effort Sharing Decision (ESD) to set the national reduction targets will continue until 2030. Next to these nationally binding targets for greenhouse gas emissions, the European Council adopted targets of at least 27% for renewable energy and energy savings by 2030. While the target on renewable energy is binding for the EU, the energy efficiency target is only indicative. Both targets will not be translated into nationally binding targets. Accordingly, the framework for the energy efficiency target remains the same compared to the current system, while it is significantly different from the current renewable energy system, which is broken down to nationally binding targets.

Partly in response to the lack of binding national targets for renewable energies and energy efficiency, the European Council also took decisions on the **governance system of EU climate and energy policies**. The European Council agreed to develop "*a reliable and transparent governance system without any unnecessary administrative burden*". The governance system should help ensure "*that the EU meets its energy policy goals, with the necessary flexibility for Member States and fully respecting their freedom to determine their energy mix*".[6] In more detail, the European Council decided that the governance system will

- "build on the existing building blocks, such as national climate programmes, national plans for renewable energy and energy efficiency";
- "streamline and bring together separate planning and reporting strands";
- "step up the role and rights of consumers, transparency and predictability for investors, inter alia by systematic monitoring of key indicators for an affordable, safe, competitive, secure and sustainable energy system";
- "facilitate coordination of national energy policies and fosters regional cooperation between Member States."[7]

In this context, the European Council also recalled its goal to build an Energy Union aiming at affordable, secure and sustainable energy, as stated in its Strategic Agenda[8], and will keep the implementation of this goal under regular review. In March 2015, the European Council reconfirmed the call for a reliable and transparent governance system.[9] Importantly, however, the **European Council also called for reviewing and developing legislation** related to emissions reduction, energy efficiency and renewables to underpin the agreed 2030 targets.

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[5] European Council (2014): European Council Conclusions, 23/24 October 2014. EUCO 169/14.
[6] European Council (2014): European Council Conclusions, 23/24 October 2014. EUCO 169/14, para. 6.
[7] European Council (2014): European Council Conclusions, 23/24 October 2014. EUCO 169/14, para. 6, 6.1., 6.2., 6.3.
[8] European Council (2014a): Strategic Agenda for the Union in Times of Change, European Council Conclusions 26/27 June 2014, page 5.
[9] European Council (2015): European Council Conclusions, 19-20 March 2015, EUCO 11/15.

In late February 2015, the **European Commission issued a Communication on the Energy Union**.[10] In this communication, the Commission reiterated important elements of the conclusions of October 2014.[11] More specifically, the Commission stated that the governance process should

- "bring together energy and climate actions as well as actions in other relevant policy areas, leading to more and longer-term policy coherence";
- "secure implementation of the internal energy market and the delivery of the 2030 energy and climate framework";
- "streamline current planning and reporting requirements, avoiding unnecessary administrative burden";
- "deepen the cooperation between Member States, including at the regional level, and with the Commission";
- "improve the data, analysis and intelligence needed to underpin the Energy Union by pooling the relevant knowledge and making it easily accessible to all stakeholders".[12]

In addition, the Commission made concrete proposals for **strengthening bodies tasked with the implementation of the 3rd Internal Energy Market Package**. It called for up-grading the European Networks of Transmission System Operators for Electricity and Gas (ENTSO-E/G). It also proposed to significantly reinforce the powers and independence of Agency for Cooperation of Energy Regulators (ACER). Today, ACER acts primarily through recommendations and has very limited decision-making rights. A strengthened mandate would help ACER to effectively oversee the development of the internal energy market.

Next to these governance discussions, there are **additional work streams with important implications for EU climate and energy governance**. The review of the energy efficiency target in 2020 is one important angle.[13] In addition, the Commission will review all relevant energy efficiency legislation and will propose revisions in 2015 and 2016.[14] Concerning renewable energies, the Commission has stated its intention to propose a new Renewable Energy Package in 2016-2017, which will include legislation to ensure that the 2030 EU target is met cost-effectively.[15] Furthermore, the Commission announced that it will propose a comprehensive road transport package and legislation promoting the completion of the internal energy market.[16]

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[10] This Communication is another essential document for future energy and climate policies, although it is not an inherent part of the governance debate, as defined by European Council in October 2014 and March 2015.

[11] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final.

[12] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final, pages 7/8.

[13] In October 2014, the European Council agreed to review the energy efficiency 2030 target in 2020, having in mind an EU level of 30 %. According to the Energy Union Package of February 2015, the Commission will propose priority sectors in which significant energy-efficiency gains can be reaped, and ways to address them at EU-level, with the EU and the member States focusing their regulatory and financial efforts on the sectors.

[14] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final, page 20, para. 9.

[15] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final, page 21, para. 13.

[16] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final, page 21, para. 11.

Against this backdrop, this **paper discusses options and requirements for an effective governance framework for climate and energy policy after 2020**. Within its limited scope, the paper does not analyse details of a new governance system but discusses its architecture. The paper is the third in a series of Ecologic Institute papers on EU climate and energy governance. In June 2014, the Ecologic Institute presented a paper that provides a more general overview of key issues raised by the proposed new governance framework for the EU's 2030 climate and energy policy. In October 2014, Ecologic Institute wrote a second paper that explored the "gap issue", i.e. what happens if Member States are not on track to contribute sufficiently to the overall EU targets.

4 Effective Governance after 2020

What is governance and what is effective governance? There are **various definitions of the term "governance"**. The Oxford Dictionary defines governance as "the activity of governing a country or controlling a company or an organization; the way in which a country is governed or a company or institution is controlled".[17] *Bevir* describes governance as "all processes of governing, whether undertaken by a government, market or network, whether over a family, tribe, formal or informal organization or territory and whether through laws, norms, power or language."[18]

For the **purpose of this paper, the term "governance" encompasses rules, processes and institutions that take part in making EU climate and energy policies**. It also includes the relationships of the actors involved (and their respective obligations towards each other) and the procedures that define their interactions. As such, the current climate and energy governance system is largely composed of legislation, and only to a limited extent of legally non-binding documents, such as (European) Council conclusions or resolutions of the European Parliament. This is not surprising because the EU is based on the rule of law and has considerable powers to legislate in the areas of climate change and energy.

In the context of the discussions on EU climate and energy policies for 2030, the term "governance" has become a central theme, although neither the European Council nor the European Commission have defined the term. In the face of it, the term remains vague and ambiguous, leaving ample room for interpretation. However, **effectiveness, compliance, reporting and planning have emerged as central governance issues**. These issues are the central themes of what the EU discusses under the heading "governance", largely because there is an agreement according to which Member States will not have to meet national targets on renewable energy and energy efficiency in 2030.

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[17] Oxford Learners Dictionary, http://www.oxfordlearnersdictionaries.com/definition/english/governance.
[18] Bevir, Mark (2013). Governance: A very short introduction. Oxford, UK: Oxford University Press. *Hufty* offers a similar definition. According to *Hufty*, governance relates to "the processes of interaction and decision-making among the actors involved in a collective problem that lead to the creation, reinforcement, or reproduction of social norms and institutions.", Hufty, Marc (2011): Investigating Policy Processes: The Governance Analytical Framework (GAF). In: Wiesmann, U., Hurni, H., et al. editors. Research for Sustainable Development: Foundations, Experiences, and Perspectives.. Bern: Geographica Bernensia: 403–424.

4.1 Effectiveness and Compliance

The (new) governance system must help implement the internal energy market and the delivery of the 2030 energy and climate framework, notably the targets on greenhouse gas reductions, renewable energy, energy efficiency and interconnectors. Compliance and effectiveness are among the more contested issues. First, there is the issue of assessing contributions of Member States to the EU targets on renewable energy and energy efficiency. Member States disagree on how to evaluate their contributions to the overall EU targets. Second, there is no agreement between Member States on how to address an implementation gap.

4.1.1 How to assess Member States policies and contributions?

The **European Council** decided in October 2014 that the overall EU targets on renewable energies and energy efficiency would not be translated into nationally binding targets; Member States would be free to set their own higher targets. While the European Council decided that the overall EU target on renewable energies "**will be fulfilled through Member States contributions guided by the need to deliver collectively the EU target**", the European Council did not elaborate on how Member States should contribute to the EU energy efficiency target.

In the (probable) absence of national targets, it is not clear **how to assess policies and contributions of Member States**. How are Member States held to account and how is implementation of the overall EU targets on energy efficiency and renewable energies ensured when Member States have not committed to any type of national target? There are a number of options – other than national targets – to evaluate contributions of Member States:

- **Quantified contributions set in legislation or by the European Commission:** One option is that a revised RED or EED would include quantified contributions of Member States to the EU target. As another option, the new RED or EED could mandate the Commission to set quantified contributions, possibly in consultations with Member States (Comitology). This top-down approach would be similar to the current RED, but would have the important difference that contributions would not be legally binding. If Member States do not fulfil their contribution, there would not be infringement procedures but other sanctions, which the RED and EED would further specify. Sanctions could include, for example, a report from the Commission outlining further measures. As a considerably weaker option, it is also possible that a political document includes quantified contributions.

- **Country-specific benchmarks:** Country-specific benchmarks for individual Member States are another option. Such benchmarks would work with country-specific, quantified criteria, such as the potential in renewable energy and energy efficiency, investment capacities and GDP/capita. Member States would have to apply these criteria when quantifying their contributions. In consequence, country-specific benchmarks would specify national contributions indirectly, possibly to an extent that Member States would effectively have only very limited discretion in quantifying their

contributions. In contrast to the previously mentioned option, country-specific benchmarks would entail a bottom-up approach, where Member States define and pledge their contribution.[19] A reformed RED and EED, respectively, could include such benchmarks or could mandate the European Commission to develop and/or adopt benchmarks, possibly applying Comitology. Although enshrined in legislation, benchmarks would not automatically be legally binding in the sense that non-compliance could trigger infringement procedures.

- **General benchmarks:** Instead of country-specific benchmarks, contributions of Member States could be evaluated applying general benchmarks. These general benchmarks could include criteria similar to those above but would only refer to the EU as a whole. Such benchmarks could be included in the RED or EED directly; alternatively, the European Commission could be mandated to develop and/or adopt such benchmarks. General benchmarks would give Member States more leeway to quantify pledges.

  This system would be somewhat similar to Article 3 of the EED. According to this provision, Member States make pledges in line with the EU target. Accordingly, Member States would pledge publically quantified contributions (not targets). These contributions would take account of the EU targets and national circumstances, such as GDP evolution, cost-effectiveness or energy imports and exports (Article 3.1. EED). The Commission would review these contributions, applying a process similar to Article 3.3. EED, according to which the Commission sums up national contributions and compares national contributions with the EU targets. The Commission proposes new measures and policies in case Member States' contributions are insufficient to meet the EU targets.

- **Plans and Reviews:** Member States publish energy plans that contain policies and measures but not specific pledges. These plans could include forward-looking trajectories, indicating trends of renewable energy, energy efficiency and emission. They would not necessarily contain quantified contributions of sectors and country-wide goals to which the Member States could be held to account. Plans would be more descriptive than normative. The European Commission could review these plans but would lack a solid evaluation basis, in particular if plans are not established in line with agreed rules or guidelines.

The **first option (quantified contributions)** is similar to the 2020 system of setting national targets under the RED, but only in content and not in legal terms. Under this proposal, contributions of Member States to meeting the EU targets would be transparent; the overall performance of the EU would become equally transparent. While this proposal appears particularly effective in supporting the EU in meeting its 2030 targets, political reality seems to suggest that this proposal is not viable.

The second option (country-specific benchmarks) entails a bottom-up approach, where Member States pledge their contributions in line with country-specific, quantified criteria. Although this system is a bottom-up approach, it would restrict Member States' discretion considerably because contributions must meet country-specific, quantified criteria. As such, this system is transparent and allows holding Member States to account.

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[19] Held, Anne, Mario Ragwitz, Gustav Resch et al. (2014): Implementing the EU 2030 Climate and Energy Framework – a closer look at renewables and opportunities for an Energy Union, Issue Paper No. 2, Dialogue on a RES policy framework for 2030, p. 6.

The **third option (general benchmarks)** gives Member States wider discretion in defining their contribution to the EU targets. In this sense, it is less rigid than country-specific benchmarks and gives the Commission a weaker mandate to ensure Member State compliance. It makes contributions of Member States transparent and demonstrates whether the EU as a whole is on track in meeting its targets on renewable energies and energy efficiency. However, experience with the EED pledge system shows that holding Member States to account individually is difficult in this system. In its Communication on energy efficiency of July 2014, for example, the Commission only called on Member States to "work equally hard to implement fully the agreed legislation"; in this case, the 20% target can be achieved without additional measures.[20]

Concerning the **fourth option (plans and reviews)**, proponents of a so-called light touch governance framework seem to suggest that only national plans should be used to assess Member State contributions. The UK and Czech Republic, for example, proposed that plans should "only be sufficient to enable an assessment of collective progress, and should be significantly less prescriptive than is currently the case under the 2020 climate and energy package".[21] In this vein, the energy plans should include projections indicating how much low-carbon generation (including renewable energy) and energy efficiency may result from policies and proposals to reduce emissions. If they only contain indicative projections, plans are considerably weaker than quantified benchmarks or targets. Projections as such are not a political commitment and have no normative power; they simply suggest a scenario depending on a variety of assumptions. As such, they are inadequate to hold Member States to account when they are off-track. This would be particularly true if plans were not public.

This **table summarises** the advantages and disadvantages of the different proposals[22]:

	Transparent	Credible	Politically viable
Quantified contributions	+++	+++	---
Country-specific benchmarks	+++	++	--
General benchmarks	++	++	--
Plans and Reviews	--	--	++

4.1.2 Implementation and Compliance

Implementation and compliance is another **contested issue**. The UK and Czech Republic called for a "light touch governance system" that focuses on collective delivery of EU energy goals while reflecting the need for national flexibility. The proposal stresses the assisting role of the European Commission and contains no provision on what happens when national

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[20] European Commission (2014a): Communication to the European Parliament and the Council: Energy Efficiency and its contribution to energy security and the 2030 Framework for climate and energy policy COM(2014) 520 final, 23 July 2014.
[21] UK and Czech Republic non-paper, European Governance of EU Energy Policy Goals, 8. January 2015.
[22] Note that each the effectiveness and political feasibility of each option largely depends on its specific design details. For this reason, the table can only give an illustrating overview.

plans are insufficient to meet the overall EU targets.[23] Germany called for a system that is not "merely a soft law process without any differentiation for areas with targets".[24] The European Commission proposed a governance framework that would be built largely on "National plans for competitive, secure and sustainable energy"; these plans would be developed through an "iterative process" that is based on detailed guidance from the Commission and consultation with neighbouring countries. A deeper iterative process would take place with the Member States concerned, if the Commission considers plans insufficient.[25]

The current governance system offers a number of **important lessons** in this respect.

- **Accountability:** To be successful, the 2030 governance system must allow holding Member States' governments to account. The EU as such cannot reach targets and cannot be held to account if targets are not met, i.e. achieving EU targets obviously depends on Member State action. It is inconceivable how Member States could be held to account if the governance system does not allow for a verification of national contributions to EU targets. There is empirical evidence that accountability through targets has contributed to climate and energy policies' success in the past. For example, the renewable target has considerable political weight and has shaped energy policies: Between 1995 – 2000, when there was no regulatory framework in place, the share of renewable energy in EU final energy grew by only 1.9% per year, but it grew by 4.5% between 2001 and 2010 when the indicative and voluntary targets were adopted. With legally binding national targets (from 2009 onwards), the growth accelerated further.[26]

- **Legal basis:** The EU is based on the rule of law, as enshrined in Article 2 TFEU. As such, EU laws demonstrate the highest possible political commitment of the EU, providing for high levels of credibility and certainty. Because the EU has a relatively good record in honouring its legal commitments[27] and because the EU has demonstrated that legal obligations are a crucial element in its policy making, the new governance framework must be founded in law to give investors long term investment certainty and provide international partners assurance that the EU is truly committed

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[23] UK and Czech Republic non-paper, European Governance of EU Energy Policy Goals, 8. January 2015: "The Commission should, in co-operation with Member States, draft high level guidance to ensure that there is a reasonable degree of consistency in the content of national plans across different Member States. This need only be sufficient to enable an assessment of collective progress, and should be significantly less prescriptive than is currently the case under the 2020 climate and energy package. The Commission should assist Member States to develop their National Plans where assistance is needed, but should adopt a light touch where Member States already have equivalent plans in place" (para. 13). "Member States' National Plans should be transparent and developed in consultation with stakeholders. Member States should submit their National Plans to the Commission and as necessary hold bilateral discussions on the content of their National Plans. This should be with a view to informing a Commission assessment of the EU's collective progress towards EU energy policy goals. The Commission should report on this to the Council no less than every three years" (para. 14). "Therefore the Plans should also include projections for how much low carbon generation (including renewable energy) and energy efficiency may result from policies and proposals to reduce emissions, while recognising the inherent technological and other uncertainties involved in projecting impacts over long periods. In this vein, Member States must have opportunities to review and adapt their plans and policies as circumstances and facts on the ground change, which is sensible when planning over such a long period" (para. 9).
[24] German non-paper on the „Energy Union", 2015, https://drive.google.com/file/d/0Bzzk5QQezBErTFNQQ2ZjMVpBYUU/view?pli=1.
[25] European Commission (2014): A policy framework for climate and energy in the period from 2020 to 2030, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2014/015 final, p. 13.
[26] Meyer-Ohlendorf, Nils, Matthias Duwe, Katharina Umpfenbach et al. (2014): The Next EU Climate and Energy Package – EU Climate Policies after 2020, Study, Ecologic Institute, p. 20, with reference to Vos, Rolf de, Thomas Winkel, and Corinna Klessmann. 2013. "Discussion Paper: The Need and Necessity of an EU-Wide Renewable Energy Target for 2030". European Copper Institute, Ecofys. http://www.ecofys.com/files/files/eci-ecofys-2013-necessity-of-an-euwide-renewable-energy-target-for-2030.pdf.
[27] It is difficult to measure implementation and enforcement. A growing number of infringement procedures, for example, could indicate weak Member State compliance but it could also show that the Commission has taken a more rigid approach to enforcement. It could also hint that civil society submits more complaints to the Commission.

to its own obligations.[28] In contrast, investors and international partners would perceive a loose framework largely based on political agreements as a lack of commitment.

- **Minimum content of legislation:** Legislation should contain minimum rules on the development and assessment of Member State action and progress. The example of the National Allocation Plans (NAPs) under the ETS shows that the assessment of the NAPs depends largely on the quality of the underlying legal basis.[29] For this reason, the legal framework should specify the mandate of the European Commission. Without specific guidance, the assessment of national energy plans could be open to legal challenge by Member States.[30]

- **Enforceable:** The EU has various means of enforcing commitments and obligations. They range from infringement procedures, to the Open Method of Coordination (OMC), to simply naming implementation gaps. Infringement procedures have their shortcomings; in particular the duration of the procedures and limited flexibility can cause problems. Court cases can last for years, weakening compliance considerably. Despite these shortcomings, infringement procedures have the great advantage that Member States take them seriously, creating strong incentives to implement EU law. Importantly, the power of the European Court of Justice to levy fines against Member States gives the national treasury departments an incentive to ensure compliance with EU law.[31]

In light of these experiences, there is a strong case to **maintain the current implementation system** that is accountable, transparent, enforceable and credible. This system gives the Commission a strong mandate to hold Member States to account. On the basis of this mandate, the Commission is entitled to monitor or enforce the implementation of relevant EU legislation.

The **Open Method of Coordination** is an alternative under consideration. In contrast to the current system, OMC is arguably more decentralised, less hierarchical and possibly more flexible. It is based principally on (1) joint defining of objectives (adopted by the Council); (2) joint measurement (statistics, indicators, guidelines); and (3) benchmarking, i.e. comparison of the Member States' performance and exchange of best practices (monitored by the Commission). As such, OMC resembles many elements of the iterative process that the European Commission proposed in early 2014.

However, **OMC is considerably weaker than the current system**. OMC suffers from a lack of accountability because it gives the Commission a feeble mandate and is considerable less transparent than the current system that is based, among others, on enforceable reporting

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[28] It is clear that the EU and its Member States are committed internationally to specific reductions in greenhouse gas emissions but a looser framework for renewable energies and energy efficiency could be perceived as lack of ambition to decarbonize the economy.

[29] The Court of First Instance concluded that "where there is no Community rule which prescribes clearly and precisely the form and methods which Member States must use to ensure the effectiveness of directives, it is for the Commission to prove […] that the instruments used by the Member States are contrary to [EU] law" and that when the EU and its Member States "share competence in an area, it is for the Commission to prove the extent to which Member States' powers are limited.", European Commission (2008): Report from the Commission on Subsidiarity and Proportionality, COM(2008) 586 final, 26.9.2008, para. 4.4.

[30] Wyns, Tomas, Arianna Khatchadourian and Sebastian Oberthür (2014): EU Governance of Renewable Energy post-2020 – risks and options, A report for the Heinrich-Böll-Stiftung European Union, December 2014, p. 30.

[31] Client Earth (2014): EU Climate & Energy Governance Health Check - Looking back to 2020 and forward towards 2030, http://www.clientearth.org/reports/141127-eu-climate-and-energy-governance-health-check.pdf.

requirements.[32] In addition, the European Parliament, the only directly elected institution of the EU, is likely to play a considerably weaker role in a system that resembles OMC.

4.2 Planning and Reporting

A key element for an effective climate and energy governance are means to communicate nationally specific strategies and policies and using them to chart ahead ex-ante and measure progress ex-post. The current legislative framework contains a whole suite of different tools and requirements for Member States to communicate plans and progress. All requirements are laid down in EU legislation; none are based on a political document. Specific implementation of these has evolved over time and is further specified by established practices and guidance provided by the European Commission.
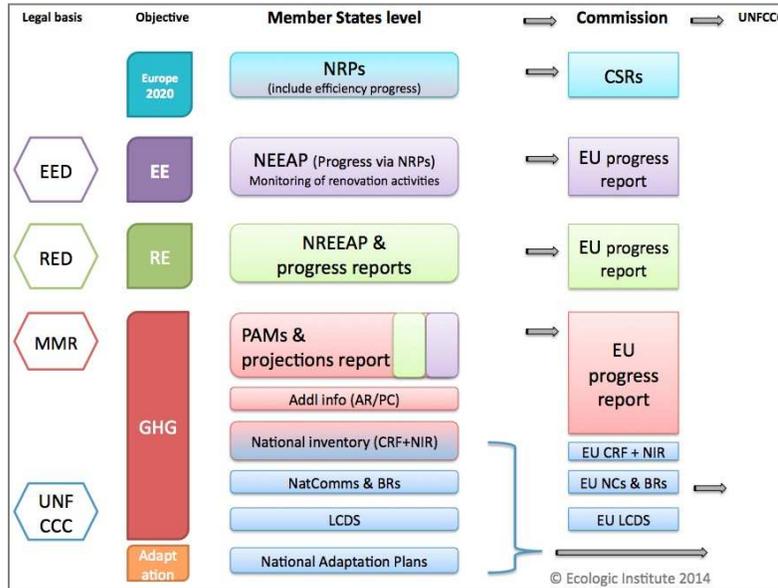
4.2.1 Current planning and reporting system

The following table gives an **overview of existing reporting and planning requirements** under the main pieces of relevant legislation. The Figure below provides a visual representation of the underlying legislative structure and its main parallel reporting strands.

Full title (legislation)	Reporting output requirements
Monitoring Mechanism Regulation (MMR) Regulation (EU) No 525/2013	• National Inventory Reports (NIRs) with GHG data (annual) • National policies and measures (PAMs) and GHG emission projections by sources and removals by sinks (biennial) – Technical table format (Excel) and separate narrative report • Information on use of auctioning revenue and project credits (AR/PC) (annual) • *No specific strategy required for covering a possible gap between projection and targets*
Renewable Energy Directive (RED) Directive 2009/28/EC	• Ex-ante planning laid down in National Renewable Energy Action Plans (once) with a significant degree of technical analysis and projected developments • MS monitoring through Progress Reports (biennial)
Energy Efficiency Directive (EED) Directive 2012/27/EU	• National Energy Efficiency Action Plans (NEEAPs) describing implemented measures and respective achieved and/or expected energy savings (triennial) • National long-term strategies for mobilising investment in the renovation of the national building stock to improve EE in residential and commercial buildings (triennial, part of NEEAPs). • Monitoring of public building renovation activities (annual) • Monitoring of progress towards the national EE target as part of European Semester (annual)
Europe 2020 strategy/ European Semester	• National Reform Programmes (NRPs) report on progress towards all objectives (annually, April) • (Adoption of Country Specific Recommendations (CSRs), adopted jointly by Council)
United Framework Convention on Climate Change (UNFCCC)	• National GHG Inventory Report (NIR) covering up to two years prior to reporting year (annual). • Biennial reports (BRs) and National Communications (NCs) (regular intervals; 7th NC no later than 2018), incl. information on emissions, mitigation policies, etc. MS submit copies to COM (MMR) • Low-Carbon Development Strategies (LCDs) (once; still to be negotiated). Progress reported to COM will follow on a biennial basis from 2015 as part of report on PAMs/projections (MMR) • National Adaptation Plans (NAPs). Progress reported to COM every 4 years from 2015 (MMR) • Information on financial support and technology transfer (S&TT) activities to developing countries (annual; reported in 2014 as part of Biennial Report) (MMR)

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[32] Client Earth (2014): 2030 Climate and Energy Governance: assessing an Open Method of Coordination approach, p. 4, http://www.clientearth.org/reports/2030-climate-and-energy-governance-assessing-an-omc-approach.pdf.

Figure 1 Visual representation of EU climate and energy reporting landscape

4.2.2 How to improve the current planning and reporting system?

In its conclusions of October 2014, the European Council called for a **streamlining of existing requirements**, by bringing together separate planning and reporting strands. The European Commission stated that the future reporting and planning system should avoid unnecessary administrative burden.[33] In a similar vein, the UK and Czech Republic non-paper demanded that the new governance system should radically streamline the existing multiple reporting mechanisms.[34]

There is indeed **room for improvement** in the current reporting and planning system. Processes and their timing could be more closely aligned and streamlined to reduce the reporting and planning effort. Reports cover similar ground in terms of energy-related data and policies and show a distinct degree of overlap, sometimes to the extent that certain elements from the RED or EED are repeated in the MMR reporting. There are also obvious interlinkages between all three major target areas. Interactions between policies could also merit a joint consideration in planning and reporting. There are, thus, clear synergies that could be realised in bringing these issues and their policies together in the documentation prepared by Member States.

There are several **ways how to streamline** the future system. We have identified the following options:

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[33] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final, pages 7/8.
[34] The paper specifies further: "Member States are currently required to produce a large number of plans and reports on climate and energy policies and the Commission undertakes numerous reviews of the achievement of climate and energy policy objectives. These policy objectives often overlap, yet the approach is piecemeal. Reporting cycles are not aligned, and the administrative burden on Member States is disproportionate."

- **Option 1, Aligning the current system:** The simplest adjustment would be to align the timetables of the main plans and to apply similar or common formats. To the extent possible, the same data sets would be used. This would be most easily done for the RED and the EED, which use similar types of documentation already (NREAPs and NEEAPs, plus progress reports every two years). In this option, there would still be separate plans and reports for renewables and efficiency.

- **Option 2, Merging reporting for energy - National Sustainable Energy Action Plans (NSEAPs):** Building on option 1, aligned EED and RED reporting would merge into National Sustainable Energy Action Plans (NSEAPs), plus regular reporting thereafter. This would require changes in the RED and EED. This option would take full account of the fact that the issues covered are inseparably interlinked (e.g. that lower energy usage increases the relative share of renewable energy) and it would also allow Member States to present their broader energy strategies. It would be easy to include specific sections on infrastructure and interconnection to neighbouring countries, and thus take account of the related policy objectives.

- **Option 3, Integrate climate and energy - National Climate and Energy Action Plans (NCEAPs):** A more ambitious option also includes greenhouse gas targets in the merged plans and reporting. The information that is currently provided under the MMR (projections and policies) could be integrated into this joint-up process under National Climate and Energy Action Plans (NCEAPs). In this way, energy planning would be seen in the context of the respective national non-ETS GHG target and it would be complemented by implementing policies. This comprehensive option would add value by requiring more specific planning on achieving national greenhouse gas targets (beyond what Member States need to report already). This option partially resembles the proposal made in the January 2014 Communication by the European Commission, in which new overarching national plans were foreseen, but it uses these plans to integrate and streamline the existing landscape – and anchor the new plans in legislation (which was not originally foreseen in the Commission approach). Such a comprehensive planning could also help meet UNFCCC requirements for the development of national Low Carbon Development Strategies (LCDS) and thus provide an additional streamlining opportunity.

- **Option 4, Climate and energy plans in parallel:** It is conceivable to align the formats and data sources of the greenhouse gas related planning and reporting with the joint renewables and efficiency report (option 2). This option could be connected to the related UNFCCC LCDS. This option would make a clearer distinction between energy objectives and climate targets, which may enhance political feasibility but may also lead to contradictions.

The following table summarises the different options' main distinct attributes to allow for a comparative perspective.

Figure 2 Overview of key characteristics of the different options for streamlining planning and reporting

Option	Degree of change from the current system	Degree of streamlining	Additional information included (synergy and added value)
1: Aligning the current system	low	low to medium	low
2: Merging reporting for energy	medium	medium to high	medium
3: Integrate climate and energy	high	high	high
4: Climate and energy in parallel	medium to high	medium to high	medium to high

Next to streamlining, the **content requirements** are of course of great importance. To improve the content of current reporting and planning requirements, the following options should be considered:[35]

- **Plans must contain a credible emissions reductions path, supported by concrete and quantified measures:** Currently, EU legislation does not oblige Member States to quantify estimated contributions of specific measures to the achievement of greenhouse gas reduction targets.[36] Member States are only obliged to show which measures they adopted to reach their renewable energy target. It would be an important improvement if Member States' plans had to quantify the estimated mitigation potential of specific measures and policies. Such a quantification requirement would increase transparency and accountability. If a Member State abandons specific mitigation measures, for example, the quantification requirement would increase pressure to adopt alternative measures that would take on the estimated emission reductions of the abandoned measure.

- **Long-term planning:** Long-term planning does not exist in all Member States, and the level of detail in existing national strategies varies. Given the time frames of climate change policies, Member States must be obliged to include a long-term vision in plans.

- **Comprehensive analysis of costs and competitiveness:** Economic costs and competiveness implications are crucial aspects of energy and climate policy, which a comprehensive reporting and planning should cover. However, it is essential that reporting and planning of these aspects does not take an overly narrow approach that focuses on company level and short-term costs. To reflect the broad spectrum of all aspects relevant for decarbonising Europe's economy, reporting and planning must also cover the long-term implications of climate and energy policy for the economy as a whole. As such, reporting and planning must cover the costs of climate change and

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[35] It is important to note that the EEA reports regularly and independently on target achievement. The annual trend report tracks progress towards Europe's climate and energy targets for 2020 and is an important milestone in the EU climate and energy policy cycle. Member State reports should not duplicate the specific findings of this report.
[36] Equally, low carbon development plans required under the UNFCCC do not contain such a requirement.

address the innovation potential and long-term market opportunities of energy and climate policies. It should also include estimates on health benefits of climate policies.

5 Governance System after 2020: What is already in Place and what is not?

In large parts, the RED will end *de facto* in 2020, because national targets are set for the year 2021. The EED has no formal end date, but in important parts the EED arguably ends in 2020 because it requires Member States to set an indicative national energy efficiency target for 2020. Energy efficiency obligation schemes, for example, terminate by the end of 2020 (Article 7 EED). The ESD, another essential element of the current governance system, will also *de facto* terminate in 2020. Similarly, the European Semester will terminate in 2020 because it is a governance cycle that oversees the implementation of the EU 2020 strategy. In consequence, **numerous key obligations for Member States will expire in 2020**.

However, these laws are expected to be **reformed and to continue after 2020**:

- Negotiation on ESD reform will probably start in late 2015.
- The Commission will review energy efficiency legislation and will propose revisions in 2015 and 2016.[37]
- In 2016-2017, the Commission will propose a new Renewable Energy Package.[38]
- The ETS will continue after 2020 but will undergo significant reform, notably with regard to MSR and reduction paths.
- The Commission announced that it will propose a comprehensive road transport package and legislation promoting the completion of the internal energy market.[39]

Furthermore, **other important elements of the current governance system will continue after 2020**, possibly without major reform. Other pieces of relevant legislation will stay in force after 2020, such as existing legislation on energy efficiency, air quality or internal energy market. Important elements of the EED will continue after 2020 because they are stand-alone requirements that do not become void in case indicative national targets expire. Examples for such obligations include Article 4 (building renovation), Article 5 (exemplary role of public buildings), or Article 6 (public procurement).

The following table gives an overview of what is covered by the current governance framework or what will possibly be addressed because concrete reform efforts are underway or have been announced. The table focuses on main pieces of legislation:

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[37] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final.
[38] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final.
[39] European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final.

	Continues after 2020?	Measureable: targets, benchmarks, matrix, plans	Enforceable: infringement, name and blame	Transparent: reporting
RED	Yes (RE package in 2016-2017) but comprehensive reform likely	2020: yes 2030: no targets, contested	2020: yes 2030: unclear	2020: yes 2030: unclear
EED	Pledges for 2020	2020: pledges 2030: unclear	2020: yes 2030: unclear	2020: yes 2030: unclear
ESD	Set to continue with national targets	2020: yes 2030: yes	2020: yes 2030: yes	2020: yes 2030: likely
ETS	Continues	2020: yes 2030: yes	2020: yes 2030: yes	2020: yes 2030: yes
European Semester	Unclear whether it will continue after 2020	2020: yes 2030: unclear	2020: yes 2030: unclear	2020: yes 2030: unclear

6 Is legislation inflexible and unable to accommodate national circumstances?

There is an argument that the current framework is inflexible and rigid. A lack of flexibility generally coins with the allegation that national circumstances are so different that Member States need to have wide discretion in designing their policies. Political commitments and OMC are considered more flexible and generally better in addressing various national circumstances. A one size-fits-all solution is inadequate and a lack of flexibility is a fundamental problem.

However, EU energy and climate legislation contains numerous elements to accommodate differing national circumstances, ranging from flexible mechanisms to differentiated targets. The ESD, for example, functions on the basis of national targets that were set in light of different national capacities. The ESD also provides for various flexibility mechanisms that give Member States considerable leeway in fulfilling their targets, including banking and borrowing of Annual Emission Allowances (AEAs) and the trading of AEAs between Member States. The ETS also contains a number of flexibility mechanisms, such as the use of international off-sets (Article 11a) or the use of Member State projects that reduce non-ETS emissions (Article 24a). The EU burden sharing under the first commitment period of the Kyoto Protocol was also based on the need to accommodate differing national circumstances. In short, flexibility is one of the founding principles of EU climate and energy law.[40] The allegation that this system is inherently inflexible is wrong in its generality.

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[40] Oberthür, Sebastian and Marc Pallemaerts (eds.) (2010): The new climate policies of the European Union. Internal legislation and climate diplomacy. Brussels.

7 Conclusion: What should the 2030 governance system look like?

In **conclusion**, the 2030 governance system should be built on the largely successful current system, as partly implied by the European Council in October 2014, which requests that the governance system builds on existing building blocks.[41] Wherever possible, it should be based on law and enforceable through infringement procedures. As an important deviation from the current system, the new governance system will not rest on binding national targets on renewable energy, i.e. a target system similar to the current framework for energy efficiency could emerge. For this reason, it is essential that Member State action will be assessed through quantified contributions or at least benchmarks (see above). The up-coming review of energy efficiency legislation in 2015 and 2016 and the proposal for a Renewable Energy Package in 2016-2017 are the right opportunities to build such a reliable and transparent governance system for the years 2021-2030.

In more detail, the 2030 governance system should look like this:

	Assessing Member State contributions	Enforcement	Reporting	Development and review
RED	quantified contributions, or at least country specific benchmarks	infringement concerning violation of the directive, as a much weaker option a system of name and blame if MS contribution is insufficient	Merge with EED and include references	Continue Comitology
EED	continue pledge system under Article 3	infringement concerning violation of the directive, as a much weaker option a system of name and blame if MS contribution is insufficient	Alternatively: merge with RED and include references	Continue Comitology
ESD	targets	infringement	specific annual reports by MS	Comitology
ETS	target, LRF	infringement	specific annual reports by MS	Comitology

Such a system would be comprehensive, essentially covering all relevant governance issues of EU energy and climate policy. It would be complemented by existing secondary law, such

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[41] European Council (2014): European Council Conclusions, 23/24 October 2014. EUCO 169/14, para. 6.

as specific legislation on energy efficiency, transport or the internal energy market. The completion of the internal energy market and state aid guidelines is another important element of this governance system. **This system would leave no or very little room for a governance system based on political commitments.** This design and quality of EU climate and energy governance is not bound to transform into a loose governance system because there are other ways to assess Member States' contributions in the absence of nationally binding targets for renewable energies.

There are a number of **additional issues** that the 2030 governance framework should address and that do not yet feature high in the current governance discussions. Among these additional issues are, in particular:

- **Long-term framework:** With the important exception of emission trading, the current and the coming governance systems are largely built on decades. It requires Member State and EU institutions to reaffirm their commitments every 10 years. This policy cycle has a number of shortcomings. Many investments relevant for reducing greenhouse gas emissions work with much longer time spans. In light of science on climate change, a decade is very short. A legally binding EU target for reducing GHG emissions by at least 80-95% by 2050 would be a major step to overcome the problems of the current policy cycle.

- **Independent regular scientific advice:** There are proposals that independent bodies regularly and publicly provide advice on climate change policies.[42] These bodies could follow the model of the UK's Committee on Climate Change. In the EU context, the European Food Safety Authority (EFSA) and the European Chemicals Agency (ECHA) are examples for such independent bodies. These agencies advise publicly on GMOs and chemicals. Though not legally binding, the Commission accepts their advice in most cases.[43] There is a strong case to argue that the EU's decarbonisation project should be based on such advice, but it is unclear why this would require a new agency. The EEA provides "sound, independent information on the environment".[44] To ensure high scientific quality, the EEA is assisted by a scientific committee which delivers public "opinions on scientific matters concerning the agency's activity" (Article 10 of Regulation 401/2009). Its annual reports on emission trends, for example, are important milestones in the EU's climate policy cycle. Although the EEA is funded by the EU and despite the fact that the European Commission has an important role in the EEA's budgeting process (Article 12 of Regulation 401/2009), the independence of the EEA has not been put into systematic doubt. If independence of the EEA were an issue, it would make more sense to strengthen the agency's independence rather than establishing another body, making an already complex governance system even more complicated.

- **Ability to learn and respond:** In principle, the EU and its legislative processes have built-in possibilities for policy learning, and are able to adjust based on experience or changing circumstances. Many legal acts foresee periodic reviews, with the option

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[42] Skillings, Simon (2015): The Energy Union needs a new approach to policy making, E3G, January 2015. Client Earth (2014): EU Climate & Energy Governance Health Check - Looking back to 2020 and forward towards 2030, http://www.clientearth.org/reports/141127-eu-climate-and-energy-governance-health-check.pdf.

[43] Client Earth (2014): EU Climate & Energy Governance Health Check - Looking back to 2020 and forward towards 2030, http://www.clientearth.org/reports/141127-eu-climate-and-energy-governance-health-check.pdf.

[44] http://www.eea.europa.eu/about-us; According to Article 1.2 of the Regulation 401/2009 on the EEA, it is the objective of the EEA to provide the Community and the Member States with "objective, reliable and comparable information at European level enabling them to take the requisite measures to protect the environment".

that changes are made if these should be warranted. The time frames for these policy cycles vary, but are counted in years.[45] In many cases, however, the EU needs to amend its policies within short time spans but is not capable of responding within shorter periods of time.

There are largely political reasons for these long time frames but the EU governance system plays its part, too: Very often, the European Council is ultimately responsible for energy and climate policy. The European Council decides by consensus, often slowing down progress.[46] Similarly, the Council of Ministers has often referred to consensus although majority voting would have been possible in legal terms. This has also slowed down progress. For these reasons, practice under new governance system should make sure that the European Council constrains itself to giving general guidance rather than determining details of EU climate and energy policies. The Council of Ministers should consider qualified voting more often, as set out in the Lisbon Treaty.

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[45] Meyer-Ohlendorf, Nils, Matthias Duwe, Katharina Umpfenbach et al. (2014): The Next EU Climate and Energy Package – EU Climate Policies after 2020, Study, Ecologic Institute.
[46] Meyer-Ohlendorf, Nils (2015): Can the European Council Impose Consensus on EU Climate Policies?, 2015.

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